

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI REAL ESTATE COMMISSION,)	
)	
Petitioner,)	
)	
vs.)	No. 10-2226 RE
)	
LINDA ALEXANDER and)	
LINDA SMITH REAL ESTATE LTD.,)	
)	
Respondents.)	

DECISION

We do not find cause to discipline the licenses of Linda Alexander (“L. Alexander”) and Linda Smith Real Estate, Ltd. (“LSRE”).

Procedure

The Missouri Real Estate Commission (“MREC”) filed an amended complaint seeking to discipline the licenses of L. Alexander and LSRE on March 16, 2012. L. Alexander and LSRE filed an answer on March 26, 2012. We held a hearing on April 12, 2012. Assistant Attorney General Matthew Laudano represented MREC. David Barrett represented L. Alexander and LSRE. We held the record open for sixty days so that the parties could depose witness Katina Alexander and file her deposition with this Commission. This case became ready for our decision on August 30, 2012, the date the last written argument was filed.

Findings of Fact

1. L. Alexander holds a real estate broker license and a broker associate license. Her licenses were current and active at all relevant times.
2. LSRE held a real estate association license. LSRE's license was current and active at all relevant times.
3. L. Alexander was the designated broker for LSRE at all relevant times.
4. Katina Alexander ("K. Alexander") held a real estate salesperson's license. K. Alexander's license was current and active at all relevant times.
5. K. Alexander is L. Alexander's sister.
6. LSRE employed K. Alexander as a real estate salesperson at all relevant times.

The Listing Agreement

7. L. Alexander owned property at 2620 Louisiana Avenue in the City of St. Louis.
8. L. Alexander signed a listing agreement with LSRE to sell the property at 2620 Louisiana.
9. The listing price on the listing agreement was \$439,000.
10. K. Alexander signed the listing agreement on behalf of LSRE.
11. L. Alexander signed the listing agreement as owner.
12. The listing agreement was dated August 2, 2006.

The Sales Contract

13. On December 26, 2006, Odell Johnson ("Johnson") signed a contract to purchase the Louisiana property from L. Alexander for \$439,000.
14. L. Alexander signed the sales contract on December 27, 2006.
15. The contract stated a closing deadline of January 12, 2007.

16. Johnson and L. Alexander amended the sales contract to extend the closing date to January 31, 2007.

17. L. Alexander and Johnson entered into an agreement to convert a carport into a garage and to install carpeting.

18. That agreement specified that those repairs would take place after closing.

19. L. Alexander paid Johnson \$19,573 by check to cover the cost of the carport's conversion into a garage.

20. L. Alexander paid Johnson \$3,000 by check to cover the cost of the carpeting.

21. Johnson was denied refinancing on the Louisiana property after the initial transaction closed.

Deposits into Johnson's Bank Account

22. Johnson deposited cash in his bank account on January 31 (\$1,100), February 2, 2007 (\$2,300), February 6, 2007 (\$4,500), February 26, 2007 (\$4,300), February 27 (\$5,000), and March 30, 2007 (\$1900.42). The total of these deposits is \$19,100.42.

23. The sources of these cash deposits are unknown.

24. Neither L. Alexander, K. Alexander, nor LSRE provided any portion of the money contained in these cash deposits.

The \$8,000 K. Alexander Loaned to Johnson

25. On January 17, 2007, K. Alexander loaned \$8,000, by check, to Johnson. Johnson deposited this check on the same day. Also on the same day, Johnson gave K. Alexander a check in the amount of \$8,000 which she deposited on January 23, 2007.

26. K. Alexander believed that Johnson needed a temporary loan while waiting for a check from his ex-wife to clear. K. Alexander thought she saw a copy of this check.

27. K. Alexander believed that Johnson was already precleared for a loan to buy the Louisiana property at the time she loaned him the \$8,000.

28. L. Alexander had no knowledge of this loan until January 22, 2009.

29. After learning of the loan, L. Alexander disapproved of the loan.

Conclusions of Law

We have jurisdiction to hear MREC's complaint.¹ MREC bears the burden of proving that L. Alexander's and LSRE's licenses are subject to discipline by a preponderance of the evidence.² A preponderance of the evidence is evidence showing, as a whole, that "the fact to be proved [is] more probable than not."³ MREC has the burden of proving that L. Alexander and LSRE have committed an act for which the law allows discipline.⁴ MREC alleges that there is cause to discipline the licenses of L. Alexander and LSRE under § 339.100.2:

Section 339.100.2 states, in relevant part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

* * *

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

* * *

(4) Representing to any lender, guaranteeing agency or any other interested party, either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

¹ Sections 339.100.2 and 621.045. Statutory references are to the 2012 supplement to the Missouri Revised Statutes unless otherwise noted.

² *Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-30 (Mo. App. W.D. 2012)

³ *Id.* at 230.

⁴ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

(7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860;

* * *

(13) Using prizes, money, gifts or other valuable consideration as inducement to secure customers or clients to purchase, lease, sell or list property when the awarding of such prizes, money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale or listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property;

* * *

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct or gross negligence;

(26) Engaging in, committing, or assisting any person in engaging in or committing mortgage fraud, as defined in section 443.930.

Section 339.040.1 states:

1. Licenses shall be granted only to persons who present, and corporations, associations, [or] partnerships whose officers, associates, [or] partners . . . who . . . present, satisfactory proof to the commission that they:

(1) Are persons of good moral character; and

(2) Bear a good reputation for honesty, integrity, and fair dealing; and

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Section 443.930.1 states:

1. It is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate to:

(1) Employ a device, scheme, or artifice to defraud;

(2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section; or

- (4) Influence, through extortion or bribery, the development, reporting, result, or review of a real estate appraisal, except that this subsection does not prohibit a mortgage lender, mortgage broker, mortgage banker, real estate licensee, or other person from asking the appraiser to do one or more of the following:
- (a) Consider additional property information;
 - (b) Provide further detail, substantiation, or explanation for the appraiser's value conclusion; or
 - (c) Correct errors in the appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice.

Regulation 20 CSR 2250-8.020 states:

- (1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. A broker shall not be held responsible for inadequate supervision if-
- (A) A licensed or unlicensed person violates a provision of Chapter 339, RSMo or the rules for it in conflict with the supervising broker's specific written policies or instructions;
 - (B) Reasonable procedures have been established to verify that adequate supervision was being performed;
 - (C) The broker, upon learning of the violation, attempted to prevent or mitigate the damage;
 - (D) The broker did not participate in the violation;
 - (E) The broker did not ratify the violation; and
 - (F) The broker did not attempt to avoid learning of the violation.

Before analyzing the alleged violations, we need to address credibility. This Commission must judge the credibility of witnesses, and we have the discretion to believe all, part, or none of the testimony of any witness.⁵ When there is a direct conflict in the testimony, we must make a choice between the conflicting testimony.⁶ After reviewing the entire record, including the hearing testimony and depositions, we find L. Alexander and K. Alexander to be credible. We find Johnson is not credible. These credibility determinations provide the basis of our decision.

MREC seeks discipline based on two factual allegations: L. Alexander's alleged payment of \$50,000 to Johnson to induce him to buy the Louisiana property and K. Alexander's loan of

⁵ *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App. W.D. 1992).

⁶ *Id.*

\$8,000 to Johnson designed to inflate the assets in Johnson's bank account and qualify him for a loan. MREC also alleges that L. Alexander failed to supervise K. Alexander and assisted K. Alexander in committing these violations. We therefore will address K. Alexander's alleged violations also.

Section 339.100.2(2)

MREC alleges the following in its amended complaint:

35. Based on the conduct as alleged above, L. Alexander and Linda Smith Real Estate, Ltd. made substantial misrepresentations and/or false promises or suppression, concealment and/or omission of material facts in the conduct of their business and/or pursued a flagrant course of misrepresentation through misrepresentation through agents, salespersons, advertising, and/or otherwise in the above referenced transactions providing cause for discipline under § 339.100.2(2), RSMo.

There is no evidence that L. Alexander and LSRE promised Johnson \$50,000 to induce him to buy the property. Thus, there was no need for L. Alexander or K. Alexander to memorialize this non-deal in the sales contract or closing documents. Also, there is no evidence that L. Alexander, K. Alexander, and LSRE promised Johnson he would be able to refinance the mortgage after six months. Further, there is no evidence that K. Alexander loaned Johnson money in order to mislead mortgage lending companies and qualify Johnson for a loan.

L. Alexander, K. Alexander, and LSRE did not make false promises or misrepresentations to Johnson. L. Alexander, K. Alexander, and LSRE did not conceal any material facts. Therefore, we find that there is no cause for discipline under §339.100.1(2).

Section 339.100.2(4) and (13)

MREC appears to claim that L. Alexander and LSRE did not disclose an alleged \$50,000 payment by which they allegedly induced Johnson to purchase the Louisiana property.⁷

⁷ Amended Complaint at ¶¶36, 38.

However, the evidence does not support the existence of either a payment of \$50,000 or offer of \$50,000 by L. Alexander, K. Alexander, or LSRE to Johnson. Therefore, there is no cause for discipline under § 339.100.2(4). Likewise, there is no cause for discipline under § 339.100.2(13).

Section 339.100.2(16)

Section 339.040.1 has three requirements: that licensees be persons of good moral character, that that “bear a good reputation for honesty, integrity, and fair dealing,” and that they “are competent to transact the business of a broker ... in such a manner as to safeguard the interest of the public.”

The MREC, in the amended complaint, alleges that L. Alexander and LSRE violated every requirement of § 339.040.

Good moral character is honesty, fairness, and respect for the law and the rights of others.⁸ Reputation is the “consensus view of many people[.]”⁹ Reputation is not a person’s actions; it is “the general opinion ... held of a person by those in the community in which such person resides[.]”¹⁰ Competent is defined as “having requisite or adequate ability or qualities[.]”¹¹

There is no evidence to show L. Alexander, K. Alexander, or LSRE lack good moral character or are incompetent. All of the evidence presented was from Johnson concerning an alleged \$50,000 payment and the \$8,000 loan. There is no credible evidence to support an alleged \$50,000 payment was made or that the \$8,000 loan was made for an improper purpose.

⁸ *Hernandez v. State Bd. of Regis’n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App. W.D. 1997).

⁹ *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. 1992).

¹⁰ *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App. K.C.D. 1976) , *quoting* Black’s Law Dictionary 1467-68 (Rev. 4th ed.).

¹¹ Merriam-Webster’s Collegiate Dictionary 253 (11th ed. 2004).

Accordingly, there is no cause to discipline L. Alexander or LSRE under § 339.100.2(16).

Section 339.100.2(19)

MREC alleges that L. Alexander's conduct and LSRE's conduct constituted all of the acts in this subdivision.

The definition of "trustworthy" is "worthy of confidence" or "dependable."¹² "Improper" means "not in accord with fact, truth, or right procedure."¹³ Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.¹⁴ "Bad faith" involves actual or constructive fraud or misleading or deceiving another.¹⁵

Incompetency is a "state of being" showing that a professional is unable or unwilling to function properly in the profession.¹⁶ Misconduct means "the willful doing of an act with a wrongful intention[;] intentional wrongdoing."¹⁷ Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.¹⁸

There is no credible evidence to show that L. Alexander, K. Alexander, or LSRE participated in any untrustworthy, improper, fraudulent, or deceptive activities. Likewise, there is no evidence to support that L. Alexander is incompetent to be a real estate broker or that she committed misconduct. Gross negligence requires expert testimony,¹⁹ and MREC did not provide expert testimony.

¹² Merriam-Webster's Collegiate Dictionary 1344 (11th ed. 2004).

¹³ *Id.* at 626.

¹⁴ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

¹⁵ BLACK'S LAW DICTIONARY 139 (6th ed. 1990).

¹⁶ *Albanna v. State Bd. of Reg'n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009).

¹⁷ *Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm'n Nov. 15, 1985) at 125, *aff'd*, 744 S.W.2d 524 (Mo. App. E.D. 1988).

¹⁸ *Id.* at 533.

¹⁹ *Tendai v. Mo. State Bd. of Registration for the Healing Arts*, 161 S.W.3d 358, 368 (Mo. 2005), overruled on other grounds by *Albanna v. State Bd. of Registration for the Healing Arts*, 293 S.W.3d 423 (Mo. 2009); *Kerwin v. Missouri Dental Bd.*, 375 S.W.3d 219, 226 (Mo.App. W.D. 2012).

We therefore find that there is no cause to discipline L. Alexander or LSRE under § 339.100.2(19).

Section 339.100.2(26)

MREC alleges that L. Alexander and LSRE committed mortgage fraud or assisted another in committing mortgage fraud under § 443.930. However, L. Alexander, K. Alexander, and LSRE did not engage Johnson to commit mortgage fraud by paying him \$50,000. Therefore, L. Alexander, K. Alexander, and LSRE did not commit mortgage fraud by failing to disclose this non-existent payment. Furthermore, K. Alexander made a loan to Johnson believing that Johnson was already precleared for a loan and did not intend to inflate the value of Johnson's assets in order to qualify him for a loan. Therefore, K. Alexander did not commit mortgage fraud.

We find that there was no violation of § 443.930 and no cause to discipline L. Alexander or LSRE under § 339.100.2(26).

Section 339.100.2(7) and (15)

Section 339.100.2(15) states that there is cause for discipline when a licensee violates any regulations established by the MREC. MREC here alleges that L. Alexander and LSRE violated 20 CSR 2250-8.020 by failing to supervise K. Alexander.

MREC does not allege which section of Chapter 339 or which portion of 20 CSR 2250-8.020 L. Alexander or LSRE allegedly violated. We assume that MREC intended to reference the \$8,000 loan that K. Alexander made to Johnson as conduct that falls under actions taken by LSRE, as its employee.

As we have found above, K. Alexander did not violate § 339.040.1, or § 443.930 or commit conduct that would cause LSRE's license to be disciplined under § 339.100.2(2), (4), (13), (16), (19), or (26). As there was no violation of statutes or regulations by L. Alexander or

LSRE's employee K. Alexander, we cannot find L. Alexander or LSRE responsible for failure to supervise. There is no cause for discipline under § 339.100.2(15) for failure to supervise.

Section 339.100.2(7) allows discipline for "paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860." Section 339.100.2(15) allows discipline for "assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.869."

MREC alleges that L. Alexander and LSRE paid K. Alexander a commission on the Louisiana property sale and that K. Alexander violated various statutes and regulations to make that sale. MREC also alleges that L. Alexander and LSRE assisted or enabled K. Alexander to violate various statutes and regulations.

As previously discussed, we find that K. Alexander did not commit conduct that would allow for discipline of LSRE's license under § 339.100.2(2), (4), (13), (16), (19), or (26). We also found that K. Alexander did not violate § 339.040.1 or § 443.930. Therefore, we find that there is no cause to discipline L. Alexander or LSRE under § 339.100.2(7) or (15).

Summary

There is no cause to discipline the licenses of Linda Alexander and Linda Smith Real Estate, Ltd.

SO ORDERED on May 7, 2013.

\s\ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner